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DEPARTMENT OF EDUCATION

[Docket ID: ED-2013-OESE-0016]

Request for Information to Gather Technical Expertise
Pertaining to the Identification and Placement of Native
American Students Who Are English Learners in Language
Instruction Educational Programs

AGENCY: Office of Elementary and Secondary Education, U.S.
Department of Education.

ACTION: Request for information.

SUMMARY: The U.S. Department of Education (the Department) requests information about practices used to accurately identify Native American students in grades K-12 as English learners and to appropriately place these students in language instruction educational programs (LIEPs). The Department makes this request to help State educational agencies (SEAs), local educational agencies (LEAs), schools, tribes, and other interested entities identify, share, and implement practices for accurately identifying Native American students who are English learners.

DATES: Written submissions must be received by the Department on or before 5:00 p.m., Washington, DC time, on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term "Identification of English Learner Native American Students response" at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov

to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to this site?"

- Postal Mail, Commercial Delivery, or Hand Delivery:

If you mail or deliver your comments, address them to Supreet Anand, Office of Elementary and Secondary Education, Attention: Native American English Learner RFI, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W106, Washington, DC 20202-6132.

- Privacy Note: The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery)

is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

Submission of Proprietary Information: Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines "confidential commercial information" as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify in your comments any specific information that you consider confidential commercial information. Please list the information by page and paragraph numbers.

This Request for Information (RFI) is issued solely for information and planning purposes and is not a request for proposals (RFPs) or a promise to issue an RFP or a notice inviting applications. This RFI does not commit the Department to contract for any supply or service. Further, the Department is not now seeking proposals and will not

accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI.

If you do not respond to this RFI, you may still apply for future contracts and grants. The Department posts RFPs on the Federal Business Opportunities Web site (www.fbo.gov). The Department announces grant competitions in the Federal Register (www.gpo.gov/fdsys). It is your responsibility to monitor these sites to determine whether the Department issues an RFP or notice inviting applications after considering the information received in response to this RFI.

The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

FOR FURTHER INFORMATION CONTACT: Supreet Anand, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W106, Washington, DC 20202-6132. Telephone: 202-401-9795.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

1. Introduction

The purpose of title III, part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA) is to help ensure that children who are limited English proficient (LEP) attain English language proficiency and meet the same State academic content and achievement standards all children are expected to meet. One of the President's education goals is for American students, including Native American students, to be first in the world in college completion by 2020.

At present, however, Native American students, compared to non-Native American peers, face substantial achievement gaps (U.S. Department of Education, November 30, 2011). The National Caucus of Native American State Legislators has described the state of education for Native American students as "distressing," pointing to academic achievement that is two to three years behind that of their white peers, high dropout and expulsion rates, and low college-completion rates (National Caucus of Native American State Legislators, 2008). On the 2011 National Assessment of Educational Progress, for example, Native American students in grade four performed lower in reading than any other group of students. Native American students also have higher dropout rates than other students. According to the 2010 American

Community Survey, the percentage of dropouts for ages 16 through 24 was 14.9 percent for Native American students compared with 5.1 percent for white students and 9.1 percent for black students (Institute of Education Sciences, American Community Survey).

With this RFI the Department is taking several steps to collect information and gather suggestions to help SEAs, LEAs, schools, tribes, and other entities identify, share, and implement practices for accurately identifying Native American students who are English learners so that more Native American students will be college- and career-ready.

First, we pose a series of questions—to which we invite interested members of the public to respond—about identifying Native American students as English learners.

Second, the Department will host a Web dialogue and conference call during which external experts and the public can engage in further discussion on accurate identification of Native American English learners.

Third, the Department will make available to the public the information collected from this RFI and the Web dialogue and conference call, as well as other resources identified by external experts participating in the Web dialogue and conference call.

2. Definitions

The following definitions apply to this RFI. Statutory definitions are indicated by the citation at the end of the definition.

English learner means a student who is limited English proficient.

Limited English proficient (LEP) means an individual--

(A) Who is aged 3 through 21;

(B) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(C) (i) Who was not born in the United States or whose native language is a language other than English;

(ii) (I) Who is a Native American or Alaska Native or a native resident of the outlying areas; and

(II) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(D) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual--

(i) The ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3) of the ESEA;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society. (section 9101(25) of the ESEA, 20 U.S.C. 7801(25)) (emphasis added).

Native American means an individual who is Indian, Alaska Native, Native Hawaiian, Native American Pacific Islander, or a native resident of the outlying areas (20 U.S.C. 7801(25) and (28); 20 U.S.C. 7491(3); 25 U.S.C. 2902).

3. Discussion

In this RFI we specifically inquire into practices regarding: (1) accurate initial identification of Native American students who are English learners; (2) the use of a survey of primary or home language other than English (PHLOTE survey), as well as other methods, in identifying Native American students as potential English learners for the purpose of placement in a LIEP; (3) the use of multi-step processes for identifying Native American English learners; and (4) defining significant impact of a Native American language on English language proficiency and

implementing that definition for determination of English language proficiency.

To be eligible as LEP under the ESEA, Native American students must not only meet the significant impact requirement in section 9101(25)(C)(ii) of the ESEA; they must also meet the eligibility requirement in subparagraph (D) of that section. In this RFI we focus on the significant impact requirement.

Accurate identification of English learner students is essential to ensure that these students receive the services necessary to meaningfully access an educational program, as required under title VI of the Civil Rights Act of 1964 (Civil Rights Act), and the services for which they are eligible under title III, part A of the ESEA. Under the ESEA and title VI, Native American students who come from an environment in which a language other than English has had a significant impact on English language proficiency may be identified as English learners. Even if a Native American child does not speak the language of his or her tribe, this language may still have a significant impact on his or her English mastery (Leap, 1993). Language impact may manifest itself in the way a student constructs meaning or applies syntax or vocabulary.

All States at the very least recommend, if not require, the use of a PHLOTE survey as a first step in identifying which students may need to take an English language proficiency assessment (Bailey and Kelly, 2010). A student's performance on that assessment helps determine whether she or he is identified as an English learner student. Any methods used to identify Native American students as English learners must be objective, valid, and reliable. This includes both initial identification as English learners and identification after an initial identification as non-English learners based on academic performance. Section 3302(f) of the ESEA provides that a child not be admitted to, or excluded from, any federally assisted education program on the basis of a surname or language-minority status.

Researchers including Bailey and Kelly (2010) have pointed to the great variability in the use of PHLOTE surveys, both across and within States, thereby calling into question the validity of the process for identifying students as English learners. Some States permit local variability in the questions included in the PHLOTE survey. As PHLOTE surveys are individually and locally administered, the variability in their administration is also great. Families may vary their responses to these

surveys, indicating in one year that a language other than English is spoken at home and, in another year that it is not.

Use of PHLOTE surveys with Native American students is particularly complex due to the current status of many Native American languages; e.g., the child may not speak the language in the home but may have a relative who does, or may have grown up in an environment in which the syntax, rhetorical style, and sociolinguistic patterns reflect the significant impact of the language. Additionally, among some communities, there may be a hesitancy to disclose Native American heritage or use of a Native American language (Weaver, 2001). As a result of these factors, Native American students may be incorrectly identified as English learners or as non-English learners upon their entry into school, and educators may find at a later point in a child's educational career that she or he has not been appropriately placed in a LIEP, or in a mainstream classroom with supports, as needed.

Under title VI of the Civil Rights Act and related requirements, school districts must provide meaningful access to educational programs for children who are English learners. Further, the Office for Civil Rights memorandum of May 25, 1970, states that:

Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

"Identification of Discrimination and Denial of Services on the Basis of National Origin," Department of Health, Education, and Welfare, 35 FR 11,595 (July 18, 1970).

Accurate identification of students as English learners is critical to compliance with the requirements (1) to properly serve and identify English learners under title VI of the Civil Rights Act and (2) to provide appropriate services under title III, part A of the ESEA.

Accordingly, SEAs, LEAs, and schools have an interest in, and must share responsibility for, developing and implementing practices that correctly identify all students, including Native American students, who are English learners. According to the 2010 U.S. Census, 5.2 million Americans identify themselves as Native American. This is an increase of 1.1 million since the 2000 Census. The 2010 Census also indicates that 28 percent of Native Americans ages 5 and older speak a language other than English at home, as compared to 21 percent of the population of the Nation as a whole. Recent estimates indicate that approximately 200 Native American languages

are "living languages"; i.e., currently spoken (Bright, 2004; Encyclopedia Britannica, 2012).

Due to its responsibilities under title VI of the Civil Rights Act of 1964 and title I, part A and title III, part A of the ESEA, the Department also has a role in supporting development and implementation of practices that correctly identify students, including Native American students, as English learners. For these reasons this RFI seeks solutions; advice; technical information; legal, regulatory, and policy approaches; and other information from the public about practices for accurately identifying Native American students who are English learners. Through this RFI, the Department also seeks to gather information and suggestions for SEAs, LEAs, and schools on how to address these issues. The Department welcomes input from SEAs, LEAs, and schools, as well as from tribes, researchers, and other organizations or individuals.

In addition, the Department will host a Web dialogue and conference call to engage external experts in an in-depth discussion about these issues. Responses to the RFI will be shared with the external experts and the public to inform the planning for the Web dialogue and conference call. Following the initial Web dialogue and conference call, the Department will decide the format and process

through which to make available the collected public input. This format could include an online link to all submissions, a document summarizing this information, a question-and-answer document to be posted on the Department's Web site, further Webinars, or other methods.

4. Context for Responses

4.1 The primary goal of this RFI is to gather information that will help SEAs and LEAs better understand existing practices for identifying Native American students who are English learners. Because the questions in section 4.2 of this notice are only guides to helping us better understand the issues surrounding identification of Native American students who are English learners, you do not have to respond to any specific question. You may provide comments in any convenient format. You may also provide relevant information that is not responsive to a particular question but may, nevertheless, be helpful.

4.2 Questions Regarding the Identification of Native American Students Who are English Learners

4.2.1 Practices and Policies. What are the practices and policies that SEAs and LEAs have implemented for accurate initial identification of Native American students who are English learners? In the case of Native American students who may have been misidentified as English learners or non-

English learners, describe the practices and policies that SEAs and LEAs have implemented to accurately identify these students? In the case of Native American students with disabilities who may have been misidentified as English learners or non-English learners, describe the practices and policies that SEAs and LEAs have implemented to accurately identify these students.

What guidance have the SEAs and LEAs provided regarding accurate identification of Native American English learners? What evidence exists that these are practices that result in accurate identification of Native American students who are English learners? Where have these practices been adopted? What are the general lessons learned from these adoptions? How might these practices be modified and improved for use in the future? Are there barriers to the adoption of these practices at the SEA, LEA, or school level? Are any of these practices promising? If so, please describe the practices, as well as evidence to support that they are promising.

4.2.2 Defining Significant Impact of a Language Other Than English on English Language Proficiency. To be eligible as English learners, Native American students must come "from an environment where a language other than English has had a significant impact on the individual's level of English

language proficiency" (section 9101(25) of the ESEA). How does the SEA, LEA, or school define and implement significant impact of a language other than English on English language proficiency? What are the factors that determine the number of generations that are affected by this significant impact? How sensitive are current English language proficiency assessment instruments in measuring the significant impact of an environment in which a language other than English is spoken? What trends or patterns have SEAs, LEAs, schools, or tribes observed regarding the identification of Native American students as English learners and the progress of these students in acquiring English and attaining English proficiency?

4.2.3 PHLOTE Surveys. How do SEAs and LEAs frame questions on PHLOTE surveys to ascertain that a language other than English has had a significant impact on a student's level of English language proficiency? What are the practices and policies with regard to PHLOTE surveys that SEAs and LEAs have used to accurately identify Native American students who are English learners? Are any of these practices promising? If so, please describe the practices, as well as evidence to support that they are promising.

4.2.4 Multi-Step Process for Identifying Native American

English Learners. Several States have indicated that they use a multi-step process to identify Native American English learners, such as interviewing a parent after completion of the PHLOTE survey or using a teacher language-observation checklist to verify a child's language needs. What are the multi-step processes used in the State, LEA, or school, including the components, timeline, and roles and responsibilities of individuals who assist with identification of students?

What evidence or research exists to support that a multi-step process is effective in accurately identifying Native American English learner students? What steps or considerations in a multi-step process are of value in evaluating Native American students who are English learners and who have or may be suspected of having disabilities; e.g., hearing impairment, particularly in the younger age range when eligibility evaluations for special education services are often conducted? What are the benefits and drawbacks of using a multi-step process? What are the roles of parents and community members in assisting with identification of these students as English learners? Are there barriers to the adoption of these practices at the SEA, LEA, or school level?

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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You may also access documents of the Department published in the Federal Register by using the article

search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

PROGRAM AUTHORITY: 20 U.S.C. 6801-6871.

Dated: February 26, 2013.

Deborah S. Delisle,
Assistant Secretary for Elementary and
Secondary Education.

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